

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Submitted on Briefs October 12, 2006

**IN RE A.J.R., ET AL.**

**Appeal from the Juvenile Court for Greene County  
No. J18218     Thomas J. Wright, Judge**

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**No. E2006-01140-COA-R3-PT - FILED NOVEMBER 28, 2006**

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E.M.R. (“Mother”) appeals the trial court’s order terminating her parental rights. After careful review, we reverse the trial court’s decision for two reasons: (1) the permanency plan setting forth Mother’s requirements to achieve reunification with and custody of her children was not entered into evidence; therefore, the trial court erred in finding Mother in substantial noncompliance with the permanency plan; and (2) the evidence did not clearly and convincingly demonstrate that the conditions that led to the children’s removal have continued to persist and are unlikely to be remedied and that termination was in the best interests of the children. We therefore reverse the trial court’s decision to terminate Mother’s parental rights.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Reversed;  
Case Dismissed**

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL PICKENS FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

James F. Taylor, Rogersville, Tennessee, for the Appellant, E.M.R.

Michael E. Moore, Acting Attorney General and Reporter, and William N. Helou, Assistant Attorney General, Nashville, Tennessee, for the Appellee, State of Tennessee, Division of Children’s Services.

**OPINION**

***I. Background***

This case began with the filing of a petition by the children’s paternal grandfather on March 29, 2004, alleging that the children, who were ages 4, 3, 2, and 10 months, were dependent and neglected and requesting that the trial court enter an immediate protective custody order granting him

temporary custody of the children. Two weeks later, the maternal grandparents filed an intervening petition for custody. After a hearing on April 13, 2004, the juvenile court referee found that the children were dependent and neglected “due to the mother’s inability to adequately provide for the care and maintenance of the children and physical abuse by the father...as he is under indictment for numerous counts of child abuse in relation to these children in Washington County, Tennessee.” The referee awarded temporary joint custody of the children to the maternal grandparents and paternal grandfather.

On June 15, 2004, the referee entered an order finding: (1) by clear and convincing evidence that the children were dependent and neglected; (2) that both parents had stipulated that the children should be placed in the custody of the Tennessee Department of Children’s Services (“DCS”); and (3) that the grandparents were “not an appropriate resource for placement” of the children. The children were placed in foster care on June 15, 2004, pursuant to this order. The referee entered a more elaborate order on October 12, 2004, stating as follows:

[T]he Court finds by clear and convincing evidence that the children...are dependent and neglect[ed] within the meaning of the law and that their current placement is no longer appropriate or available and that the children should be placed in the care and custody of the [DCS]...Further, that it is contrary to the children’s welfare to remain in the care, custody or control of their mother and father as this Court found probable cause for the removal of the children at the last hearing held on April 13, 2004. That at that time the Court found the children dependent and neglected due to the mother’s inability to adequately provide for the care and maintenance of the children and based upon the physical abuse by the father...the Court reiterates that finding and holds that such situation still exists. The Court is further concerned that [Mother] disregarded a subpoena to testify at [Father’s] trial, for his alleged abuse of [Mother] and their children and faces consequences in the Washington County Criminal Court as a result of such conduct. The Court is further concerned that in spite of the allegations made by [Mother] and the Order of Protection that is in effect against [Father] she admits to having contact with [Father] on numerous occasions. Most importantly, however, that both parents have stipulated that the children should be placed in foster care.

DCS filed its petition for termination of parental rights of Mother and Father on August 10, 2005, alleging that Mother and Father were guilty of abandonment, that there was substantial noncompliance with the statement of responsibilities in the permanency plan, and that the conditions which led to the children’s removal persisted and were unlikely to be remedied at an early date. *See* T.C.A. § 36-1-113(g). Father voluntarily surrendered his parental rights, and he is not a party to this appeal. After a hearing on May 17, 2006, the trial court entered an order terminating Mother’s

parental rights on the grounds that she was in substantial noncompliance with the permanency plan; that the conditions which led to the children's removal continued to persist; and that termination was in the best interest of the children. The trial court found that DCS failed to prove abandonment by clear and convincing evidence. Mother appeals.

## ***II. Issues Presented***

The issues presented on appeal are whether the trial court erred in finding, by clear and convincing evidence, the following:

1. That Mother was in substantial noncompliance with the requirements of the permanency plan, pursuant to T.C.A. § 36-1-113(g)(2);

2. That the children had been removed from Mother's home for more than six months, that the conditions that led to the children's removal still persisted and were unlikely to be remedied at an early date, and that the continuation of the parent-child relationship greatly diminished the children's chances of early integration into a safe, stable, and permanent home, pursuant to T.C.A. § 36-1-113(g)(3)(A); and

3. That termination of the Mother's parental rights was in the best interest of the children, pursuant to T.C.A. § 36-1-113(c)(2).

## ***III. Standard of Review***

A biological parent's right to the care and custody of his or her child is among the oldest of the judicially recognized liberty interests protected by the due process clauses of the federal and state constitutions. *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Hawk v. Hawk*, 855 S.W.2d 573, 578-79 (Tenn. 1993); *Ray v. Ray*, 83 S.W.3d 726, 731 (Tenn. Ct. App. 2001). Although this right is fundamental and superior to claims of other persons and the government, it is not absolute. *State v. C.H.K.*, 154 S.W.3d 586, 589 (Tenn. Ct. App. 2004). This right continues without interruption only as long as a parent has not relinquished it, abandoned it, or engaged in conduct requiring its limitation or termination. *Blair v. Badenhope*, 77 S.W.3d 137, 141 (Tenn. 2002). Although "parents have a fundamental right to the care, custody, and control of their children," this right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute. *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Stanley v. Illinois*, 405 U.S. 645 (1972)).

Terminating parental rights has the legal effect of reducing the parent to the role of a complete stranger, "severing forever all legal rights and obligations of the parent." T.C.A. § 36-1-113(l)(1). The United States Supreme Court has recognized the unique nature of proceedings to terminate parental rights, stating that "[f]ew consequences of judicial action are so grave as the severance of natural family ties." *M.L.B. v. S.L.J.*, 519 U.S. 102, 119, 117 S.Ct. 555, 565, 136

L.Ed.2d 473 (1996) (quoting *Santosky v. Kramer*, 455 U.S. 745, 787, 102 S.Ct. 1388, 1412, 71 L.Ed.2d 599 (1982) (Rehnquist, J., dissenting)). As a result, “[t]he interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment.” *Id.* The constitutional protections of the parent-child relationship require certain safeguards before the relationship can be severed. *O’Daniel v. Messier*, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995). This most drastic interference with a parent’s rights requires “the opportunity for an individualized determination that a parent is either unfit or will cause substantial harm to his or her child before the fundamental right to the care and custody of the child can be taken away.” *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999).

Termination proceedings are governed by statute in Tennessee. Parties who have standing to seek the termination of a biological parent's parental rights must first prove at least one of the statutory grounds for termination. T.C.A. § 36-1-113(c)(1). Secondly, they must prove that termination of the parent's rights is in the child's best interest. T.C.A. § 36-1-113(c)(2). Because the decision to terminate parental rights has profound consequences, courts must apply a higher standard of proof in deciding termination cases. Therefore, to justify termination of parental rights, the party seeking termination must prove by clear and convincing evidence the ground (or grounds) for termination and that termination is in the child's best interest. T.C.A. § 36-1-113(c); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

The heightened burden of proof in parental termination cases minimizes the risk of erroneous decisions. *In re C.W.W.*, 37 S.W.3d 467, 474 (Tenn. Ct. App. 2000); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Evidence satisfying the clear and convincing evidence standard establishes that the truth of the facts asserted is highly probable, *State v. Demarr*, No. M2002-02603-COA-R3-JV, 2003 WL 21946726, at \*9 (Tenn. Ct. App. M.S., Aug. 13, 2003), *no appl. perm. filed*, and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence. *Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002); *In re S.M.*, 149 S.W.3d 632, 639 (Tenn. Ct. App. 2004); *In re J.J.C.*, 148 S.W.3d 919, 925 (Tenn. Ct. App. 2004). It produces in a fact-finder's mind a firm belief or conviction regarding the truth of the facts sought to be established. *In re A.D.A.*, 84 S.W.3d 592, 596 (Tenn. Ct. App. 2002); *Ray v. Ray*, 83 S.W.3d 726, 733 (Tenn. Ct. App. 2001); *In re C.W.W.*, 37 S.W.3d at 474.

In a non-jury case such as this one, we review the record *de novo* with a presumption of correctness as to the trial court's determination of facts, and we must honor those findings unless the evidence preponderates to the contrary. Tenn. R. App. P. 13(d); *Union Carbide v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded to either as to the trial court's factual findings. *Seals v. England/Corsair Upholstery Mfg. Co., Inc.*, 984 S.W.2d 912, 915 (Tenn. 1999). The trial court's specific findings of fact are first reviewed and are presumed to be correct unless the evidence preponderates against them. We then determine whether the facts, as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the grounds for terminating the biological parent's

parental rights. *In re S.M.*, 149 S.W.3d 632, 640 (Tenn. Ct. App. 2004). The trial court's conclusions of law are reviewed *de novo* and are accorded no presumption of correctness. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996); *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993).

#### *IV. Analysis*

##### *A. Substantial Noncompliance with Permanency Plan*

The trial court terminated Mother's parental rights based upon its finding that Mother failed to comply with her responsibilities under the permanency plan, a written document which sets out the requirements to achieve family reunification or other appropriate goals. T.C.A. §§ 37-2-402(8), -403(a)(1). Parental rights may be terminated upon proof, by clear and convincing evidence, that "[t]here has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care..." T.C.A. § 36-1-113(g)(2). The requirements must be stated in specific terms and must be reasonably related to the specified goal. T.C.A. § 37-2-403(a)(2)(A).

To prevail in a termination case on a claim of substantial noncompliance with a permanency plan, DCS must prove: (1) the terms of the plan, *Dep't of Children's Services v. D.W.J.*, No. E2004-02586-COA-R3-PT, 2005 WL 1528367 (Tenn. Ct. App. E.S., June 29, 2005); (2) that the plan requirements were reasonable and related to remedying the conditions that caused the child to be removed from the parent's custody in the first place, *In re Valentine*, 79 S.W.3d at 547; *In re L.J.C.*, 124 S.W.3d 609, 621 (Tenn. Ct. App. 2003); and (3) that the parent's noncompliance was substantial in light of the degree of noncompliance and the importance of the particular requirement that has not been met. *Valentine*, 79 S.W.3d at 548-49; *In re Z.J.S.*, No. M2002-02235-COA-R3-JV, 2003 WL 21266854, at \*12 (Tenn. Ct. App. M.S., June 3, 2003); *Dep't of Children's Services v. T.M.B.K.*, 197 S.W.3d 282, 293 (Tenn. Ct. App. 2006).

In this case, the permanency plan which DCS alleged Mother did not comply with was not introduced into evidence and is not a part of the record before us. A subsequent revised plan for each of the four children was introduced; but three of the four plans are dated April 27, 2006, more than eight months after DCS filed its termination petition. The fourth revised plan is dated May 16, 2005, shortly before the petition to terminate was filed, after DCS made the decision to seek termination of Mother's parental rights, and nearly a year after DCS took custody of the children. These plans do not clearly demonstrate the requirements that DCS alleges Mother failed to substantially comply with, nor do they demonstrate that Mother had notice of exactly what the original permanency plan required of her.

We have previously held that when DCS is relying on substantial noncompliance with the permanency plan as a ground for termination of parental rights, it is essential that the plan be

admitted into evidence. In *Dep't of Children's Services v. D.W.J.*, this court made the following pertinent comments, which apply equally to this case:

Needless to say, the permanency plan must be admitted into evidence before the trial judge can consider it and it must be properly included in the record on appeal before we can consider it. The permanency plan was not admitted into evidence at any time during the trial... Tenn. R. Juv. P. 28(c) requires the proper admission of documents into evidence before they can be considered by the trial judge. Although various witnesses referred in their testimony to the permanency plan and its contents, their testimony was only an incomplete and vague description of the contents of the plan. Without the plan in evidence, the trial judge could not have properly made the required factual determinations regarding the plan. Without the plan in evidence, we do not have an adequate record from which to review the trial court's decision. DCS had the burden of producing clear and convincing evidence that the requirements of the permanency plan involving Mother's children were reasonable and related to remedying the conditions that necessitated the children's removal from her custody; that DCS had made reasonable efforts to assist Mother in complying with the plan; and that Mother had failed to substantially comply with the plan.

*Dep't of Children's Services v. D.W.J.*, No. E2004-02586-COA-R3-PT, 2005 WL 1528367, at \*3 (Tenn. Ct. App. E.S., June 29, 2005). As in *D.W.J.*, a case worker in this case testified as to some of the requirements of the plan. This is not sufficient. The permanency plan must be introduced into evidence in a case where termination is sought on ground of substantial noncompliance with the plan pursuant to T.C.A. § 36-1-113(g)(2). Accordingly, we hold that DCS failed to meet its burden of proof regarding its allegations of substantial noncompliance with the permanency plan because the plan was not introduced into evidence and made part of the record.

#### *B. Removal for Six Months and Failure to Remedy Conditions*

The second ground relied on by the trial court to terminate Mother's parental rights was T.C.A. § 36-1-113(g)(3)(A), which requires DCS to prove that:

- (3)(A) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:
  - (i) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the

child's safe return to the care of the parent(s) or guardian(s), still persist;  
(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and  
(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

T.C.A. § 36-1-113(g)(3)(A); *see also In re Audrey S.*, 182 S.W.3d 838, 871 (Tenn. Ct. App. 2005).

The trial court's final judgment terminating Mother's parental rights found that (1) Mother "has made no reasonable efforts to provide a suitable home for the children at an early date;" (2) Mother "throughout the history of the case failed to maintain for any substantial period of time regular employment and stable housing;" (3) Mother had not paid any child support since starting to work at her most recent employment; and (4) Mother continued to associate with Father, who has a violent history, noting that "they are divorced, he has surrendered his parental rights, [Mother] should have no reason to continue to have anything to do with [Father], yet she continues to do so."

We review the proof at trial to determine whether there is clear and convincing evidence that all of the requirements of this code section have been met. *Dep't of Children's Services v. A.M.H.*, 198 S.W.3d 757, 767 (Tenn. Ct. App. 2006). It is not disputed that the children have been removed from Mother's home for longer than six months.

We next must analyze the conditions that led to removal to determine whether they, in all reasonable probability, would cause the children to be subjected to further abuse or neglect and still persist. *Dep't of Children's Services v. C.H.K.*, 154 S.W.3d 586, 592 (Tenn. Ct. App. 2004). The conditions which led to removal, according to the juvenile court referee's order placing custody of the children with DCS, were the "mother's inability to adequately provide for the care and maintenance of the children and based upon the physical abuse by the father...most importantly, however, that both parents have stipulated that the children should be placed in foster care." The juvenile court referee's earlier order suggests that the court was concerned with lack of stability in Mother's life as regards her housing, employment, and relationship with Father. The referee's order awarding temporary custody to the grandparents mandates that "[Mother] shall obtain stable housing, no live-in boyfriends, must obtain a divorce from Husband, and obtain employment."

Mother's stipulation that her children be placed in the custody of DCS must be viewed in light of the facts surrounding her agreement. At the time she agreed that DCS should take custody, the children were in the legal custody of her parents and the paternal grandfather. Mother opposed the award of custody to her parents and the paternal grandfather. The paternal grandfather admitted he filed the initial petition for custody after Mother rejected his offer of marriage. The juvenile

court referee found the maternal grandparents not fit for custody after revelations of alcohol abuse problems, possible child sexual abuse, and several criminal convictions of Mother's mother, including one after she had been granted custody of the children.

DCS presented the testimony of three of its case managers who worked on this case. From their testimony, it is apparent that Mother made some significant efforts in an attempt to comply with what was asked of her, to improve her life situation, and to get her children back. The record indicates that Mother made child support payments on an apparently reasonably regular basis. Mother was scheduled for one-hour visitations with her children on Thursday evenings, which she regularly attended. Rebecca Rollins, one of the case managers, when asked to testify about Mother's efforts to comply with the permanency plan's requirements, testified as follows:

A: She [Mother] is to cooperate with DCS and complete the tasks that we asked her to do which was contact Mental Health to schedule a SASSI [substance abuse screening inventory] evaluation and sign the release forms to address issues of self-esteem, domestic violence issues and to follow any recommendations.

Q: Did she do that?

A: Yes.

Q: Next.

A: [Mother] will submit to random drug screen either at CCS or at DDS.

Q: Did she do that?

A: She submitted to one drug screen for me, but someone else had to do it because I was unavailable, but she did submit and that drug screen, if my memory is correct, was negative. And she was to enroll in an age appropriate parenting class. That, I don't know if she did. I'm not for sure if she did.

Q: Did you discuss that with her?

A: I did not discuss that with her because by the time I got the case it was a year in, so...

Q: So you presumed she should have already done it?



A: Right. And she will work on secure and stable legal monthly income, which means she would maintain a job, you know, for a long span of time. But she always went to temporary services and the jobs were short lived.

There is no proof in the record that Mother suffers from any substance abuse problems. Mother testified without contradiction that she completed the required parenting classes.

Regarding Mother's domestic and employment situation, the record reveals a marked lack of stability, as the trial court correctly found. By Mother's own testimony, she lived in at least four different residences between the trial court's order removing custody from her and the hearing date, and Mother also stayed at several other places with friends and relatives for short periods during that time frame. In her testimony, Mother provided various reasons and rationales for moving so often; but the trial court specifically discounted her testimony as not credible, and we defer to the trial court's credibility determinations. However, it is undisputed that several unfortunate events occurred in 2005 which caused some of Mother's domestic and employment instability. In January of 2005, Mother was involved in a serious car accident which resulted in a fractured hip, an extended stay in the hospital, and the loss of her means of transportation. In November of 2005, Mother's apartment burned, which obviously required her to change residences. She suffered lung damage in the fire and spent two days in the hospital.

Mother's employment history has been similarly sporadic. Mother has a G.E.D. certificate with no further education or specialized job skills. She has held numerous employment positions since the inception of this case, none of which lasted very long. Some of her employment difficulties resulted from the accidents and injuries above described, but it is clear that Mother bears responsibility for a significant portion of her job instability; she was fired from one position because of unsatisfactory attendance, for instance. It does appear from the record that Mother has never stopped trying to work, however; there is evidence of numerous job applications and attempts to find employment on her part. At the time of trial, Mother had apparently been employed at Greeneville Auto Care for a period of some three months. She provided a letter, ostensibly from her supervisor, saying that she "is a hard worker and doing great," and that "I hope she will continue to work for Greeneville Auto Care." Mother did not, however, provide a pay stub or proof of her employment other than the letter.

As regards Mother's ability to provide a suitable home for her children, she testified that she currently lived in a "nice house" in Johnson City. The court-appointed CASA worker, Don Merzlak, reported that he made a surprise visit to Mother's home and found it "neat and clean, the neighborhood acceptable for children." Mr. Merzlak stated that "while the apartment is small, she would have two bedrooms for the children. I believe this would be a safe setting for the children." Regarding one of Mother's earlier residences, Mr. Merzlak's report found "the home neat and well cared for, with plenty of room for the children should she regain custody in the future." Ms. Rollins testified as follows about Mother's home in early 2004:

A: ...I personally visited that home on June the 28<sup>th</sup>.

Q: Of 2004?

A: Of 2004. She had just started moving in, and the home – I personally had never been to a three-bedroom project. That was my first experience. The home was huge. I mean, the living room. [Mother] was more worried about what to put in the kids' bedrooms and, you know, trying to get the home set up. She had toys in the home all ready and things of that sort. She was more – you know, fixing up the apartment to be a homey environment at that time. It was an appropriate home...I made the recommendation that it was a very appropriate home and let them know what I had saw [sic] and reported back to them.

Thus, the record supports the conclusion that Mother is capable of providing an acceptable home for the children, and has made past efforts to do so.

We now turn to the most troubling aspect of this case, both for the trial court and this Court: Mother's continuing relationship with Father. On October 1, 2003, Father violently abused Mother in the presence of the children in a disturbing incident that involved both alcohol abuse and at least one firearm. Father was subsequently convicted on two counts of aggravated assault and sentenced to ten years in prison. Mother refused to appear in court to testify at Father's trial, in violation of a subpoena, resulting in Mother being sentenced to ten days in jail and Father receiving a lighter sentence.

While Father was serving his sentence in jail, he was allowed to participate in a work release program. During February of 2005, Mother transported Father from jail to work and back to jail at the end of each day. This occurred after her car wreck, and Mother testified that Father's aunt allowed her to borrow the aunt's car, but only on the condition that she transport Father to and from work. After Father served a portion of his sentence, he was released on probation on May 5, 2005. On June 14, 2005, Mother and Father applied for and signed an apartment lease. Both Father and Mother testified that Father did not live with Mother at that apartment, and that they put his name on the lease in an attempt to get his probation transferred to Greene County; but the trial court disbelieved this testimony, and we agree with the trial court that the record establishes that they were living together at that time.

At the hearing, Father admitted to abusing Mother and stated that the incident that resulted in his ten-year sentence was not the first incident of abuse. Further, one of the DCS case managers testified as follows:

A: ... About three or four days after [Father] got out of jail and he – we knew he was in town. She showed up at the office with her leg

hurt. And she said she had hurt it mowing a yard. At our last hearing when [Father] surrendered his rights, I asked her out there what happened. I said, “You know, you and I both know what happened, so why don’t you just tell me what happened?” And she told me then that [Father] had hurt her leg then, so she’s still with him. He’s still abusive and the children are still in danger.

On September 30, 2005, Father’s probation was revoked for a public intoxication charge resulting from an incident on July 2, 2005 which apparently did not involve Mother. Father returned to jail and was ordered to serve the rest of his sentence, but apparently was released on probation again sometime before the hearing, because he stated at the hearing that he was living by himself on probation in Washington County.

The apartment where Mother and Father were living until Father’s arrest burned in November of 2005. There is no proof in the record showing whether Mother and Father were in contact during the period from July 2, 2005 until the termination hearing on May 17, 2006.

We have reviewed the entire record in light of the applicable statutory requirements and the “clear and convincing” standard of review. Because of Mother’s efforts to comply with what DCS required of her, the undisputed exigent circumstances such as Mother’s car accident and loss of her apartment to fire, and the absence of proof demonstrating the persistence of domestic violence by Father for a significant amount of time prior to the hearing, we hold that DCS did not prove by clear and convincing evidence that the conditions that led to the children’s removal have continued to persist and are unlikely to be remedied. *See Dep’t of Children’s Services v. C.H.K.*, 154 S.W.3d at 592; *Dep’t of Children’s Services v. M.C.M.M.C.*, No. E2005-00390-COA-R3-PT, 2005 WL 2148627, at \*5-6 (Tenn. Ct. App. E.S., Sept. 7, 2005). We therefore reverse the trial court’s judgment terminating Mother’s parental rights upon this ground.

### *C. Best Interests of the Children*

Tennessee law provides that a court shall consider the following factors when determining whether termination of parental rights is in the best interest of a child:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation

or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

T.C.A. § 36-1-113(i). The factors enumerated above are not exhaustive, and “[t]he statute does not require every factor to appear before a court can find that termination is in a child's best interest.” *Dep’t of Children's Services v. T.S.W.*, No. M2001-01735-COA-R3-PT, 2002 WL 970434, at \*3 (Tenn. Ct. App. M.S., May 10, 2002); *In re I.C.G.*, No. E2006-00746-COA-R3-PT, 2006 WL 3077510, at \*4 (Tenn. Ct. App. E.S., Oct. 31, 2006).

Regina Collins, a DCS case worker, testified that the children had stayed in the same foster home since removal, established stability there, and bonded with the foster parents. But she further stated that “the foster family is not interested in adoption.” Ms. Collins stated that there is a family interested in adoption and that the children have a relationship with them, but they have not lived with the potential adoptive family.

The trial court expressed concern with Mother’s emotional and mental condition, noting that she had kept only 19 of some 52 of her appointments with a mental health therapist, and her testimony that she had been prescribed Lexapro, Xanax, Seroquel, and Wellbutrin, and “I was taking

them, but not the way I should have.” However, it is not clear from the record that Mother was required to attend therapy; as already noted, Ms. Rollins testified that Mother did “cooperate with DCS and complete the tasks that we asked her to do which was contact Mental Health to schedule a SASSI [substance abuse screening inventory] evaluation and sign the release forms to address issues of self-esteem, domestic violence issues and to follow any recommendations.” Further, there was no testimony from a medical expert or therapist regarding Mother’s mental or emotional condition.

As stated, considering the totality of the circumstances, Mother has made a reasonable effort to pay child support and has regularly maintained contact with the children through her scheduled visitations. It is apparent that Mother loves the children and wants to maintain a relationship with them. There is nothing in the record suggesting that Mother herself has ever shown brutality, abuse, or neglect of the children, although it is clear that she has been in an abusive relationship with Father and that he poses a threat of danger to both her and the children. In this regard, Mother has made some effort to end the relationship by obtaining a divorce from Father. Further, at the time of the hearing, Mother had obtained housing found by the CASA worker to be adequate, and had apparently held her employment for some three months. Thus, the possibility that she has been able to “turn the corner” and stabilize an improving life situation has been raised. Considering the statutory factors in light of the record as a whole, we hold that the trial court erred in finding that DCS proved by clear and convincing evidence that termination of Mother’s parental rights was in the children’s best interest.

## ***V. Conclusion***

In reaching our conclusion in this admittedly close and difficult case, we have carefully considered the proof presented in light of Mother’s fundamental constitutional parental rights, and the severity and irreversible finality of a judgment terminating her parental rights, which affects not only her but also her four children. We are also guided by our standard of review requiring clear and convincing evidence, which must eliminate “any serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). For all of the reasons discussed above, we hold that the proof presented by DCS and relied upon by the trial court does not clearly and convincingly demonstrate that termination of Mother’s parental rights is warranted in this case.

We do not condone the decisions that have resulted in the instability that has plagued Mother’s life. We also add the voice of this Court to that litany of voices warning Mother that she must make, and firmly adhere to, the decision to sever and terminate her abusive relationship with Father for her to obtain any hope of regaining custody of the children. Mother must work cooperatively with DCS, which includes making her home open and available to inspection by its case workers and managers, who will be alert for any sign of contact with Father.

For all of the aforementioned reasons, the judgment of the trial court terminating Mother's parental rights is reversed, and the petition to terminate is dismissed. Costs on appeal are assessed to the Appellee, State of Tennessee, Department of Children's Services.

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SHARON G. LEE, JUDGE